IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 24.06.2019

Coram

THE HONOURABLE MR. JUSTICE M.SUNDAR

W.P.Nos.17065, 17066, 17069 and 17073 of 2019
and W.M.P.Nos.16622, 16623, 16625 and 16618 of 2019

Tvl.Vikas Submersible Spares
Represented by its Proprietrix
Smt.Rakhee Nikesh Parekh .. Petitioner in all W.Ps.

vs.

The Assistant Commissioner (CT)
P.N.Palayam Assessment Circle
Coimbatore. .. Respondent in all W.Ps.

Writ Petitions filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, calling for the records on the files of the respondent in TIN:33672163017/2012-13, TIN:33672163017/2014-15, TIN:33672163017/2016-17 and TIN:33672163017/2015-16 respectively dated 14.05.2019 and quash the same as being without jurisdiction, authority of law and contrary to the principles of natural justice and issue such further writ, order or direction as this Honorable Court may deem fit and appropriate in the facts and circumstances of the case and thus render justice.

For Petitioner : Mr.R.Senniappan
(In all W.Ps)
For Respondent : Mr.M.Hariharan
(In all W.Ps) Additional Government Pleader.

COMMON ORDER

This common order will govern all these four writ petitions.

2. Mr.R.Senniappan, learned counsel on record for writ petitioner in all these four writ petitions is before this Court. Mr.M.Hariharan, learned 'Additional Government Pleader' (' AGP' for brevity) accepts notice on behalf of sole respondent in all these four writ petitions.

3. With consent of learned counsel on both sides, main writ petitions itself are taken up and are being disposed of.

4. Factual matrix in a nutshell that is imperative for appreciating the instant common order is as follows:

a) Writ petitioner is a dealer registered with the authorities concerned under 'Tamil Nadu Value Added Tax Act, 2006 (Tamil Nadu Act 32 of 2006)' (' TNVAT Act' for brevity).

b) Writ petitioner submits that monthly returns were being filed and there were deemed assessment inter alia under Section 22(2) of TNVAT Act.

c) Assessment years, which form subject matter of these four writ petitions viz., 2012-13, 2014-15 to 2016-17 and these four Assessment Years shall collectively be referred to as 'said AYs' for the sake of convenience and brevity.

d) When things stood as above, respondent officers conducted an inspection in the premises of the writ petitioner and certain defects in the maintenance of accounts were found. Certain records were recovered. Accounts were called for to verify the correctness of the contents in the recovered records.

e) Thereafter, 'show cause notices' ('SCNs' for brevity) were issued. The SCNs are dated 14.02.2019 and they were duly served on the writ petitioner on 16.02.2019. These SCNs called upon the writ petitioner to file their objections within a fortnight. Personal hearing was also fixed on 25.02.2019 at 11.00 a.m. However, writ petitioner did not avail the personal hearing and writ petitioner did not file objections.

f) Therefore, respondent proceeded to pass four Assessment Orders, all dated 14.05.2019 bearing reference TIN:33672163017/2012-13, TIN:33672163017/2014-15, TIN:33672163017/2016-17 and TIN:33672163017/2015-16 (hereinafter 'impugned orders' in plural and 'impugned order' in singular for brevity and clarity)

g) Complaining that the impugned orders have not been served on the writ petitioner in accordance with the Rules under TNVAT Act being 'Tamil Nadu

Value Added Tax Rules, 2007' ('TNVAT Rules' for brevity), instant writ petitions have been filed.

5. Primary and primordial submission of learned counsel for writ petitioner is that impugned orders have not been served on the writ petitioner in accordance with Rule 19 of TNVAT Rules. Learned counsel, invited the attention of this Court to the explanation to Rule 19(1)(a) and submitted that when an order is manually delivered, an endorsement made by the person, who delivers the order will constitute proof and there is none in the instant case.

6. Responding to the aforesaid submission, learned State Counsel, i.e., AGP pointed out that notices have been duly served on the writ petitioner as it contains the round seal of the writ petitioner company and the person, who received it in the writ petitioner company, has signed after affixing the round seal. There is no disputation or disagreement before this Court that the round seals found/affixed in the impugned orders are the seals of writ petitioner company. As there is no disputation that the seals found in the impugned orders are the seals of the writ petitioner company, it is clear that notices have in fact being served on the writ petitioner.

7. With regard to endorsement of the person, who delivered the same, that would form part of the records of the Revenue/respondent, is learned Revenue counsel's say. Even if there is an issue in this regard, these are all factual disputes, which cannot be examined and decided on affidavits and counter affidavits in a writ petition.

8. This takes us to the alternate remedy aspect that is available to the writ petitioner.

9. There is no disputation or disagreement before this Court that writ petitioner has an alternate remedy by way of an appeal to the Appellate Deputy Commissioner, against the impugned orders. This appeal is under Section 51 of TNVAT Act.

10. As already alluded to supra, the issue of service of notices if at all is narrowed down to the endorsement by the person, who delivered the same. This is clearly factual issue. Therefore, this Court is convinced that this is a fit case to relegate the writ petitioner to the alternate remedy of an appeal under Section 51 of TNVAT Act.

11. Before adverting to the alternate remedy aspect, it is noticed that the inspection report being relied on by the respondent in the impugned orders cannot be faulted by relying

on what has now come to stay as Narasus Principle laid down in Narasus Roller Flour Mills Vs. Commercial Tax Officer (Enforcement Wing), Sankagiri reported in (2015) 81 VST 560 (MAD). The reason is, on facts, in Narasus Roller Flour Mill's case, writ petitioner had filed objections by responding to the SCNs, whereas in instant case writ petitioner has not filed objections and has not availed the personal hearing which was given. Learned Revenue Counsel pointed out that examination of writ petitioner's case will arise only when the proposal is objected to and therefore, Narasus principle is inapplicable to instant case. Therefore, this aspect of the matter also does not help the writ petitioner.

12. Though the affidavits filed in support of the writ petitions advert to several issues, the arguments were focused on the aspect of Rule 19 of TNVAT Rules.

13. This takes us to the alternate remedy aspect.

14. With regard to alternate remedy and the exercise of writ jurisdiction under Article 226 of Constitution of India, the position of law has been laid down in a long line of authorities.

15. In the long line of authorities it has been held that alternate remedy is not an absolute rule. In other words, it is not a rule of compulsion, but it is a rule of discretion. However, Hon'ble Supreme Court had held that though it is a rule of discretion, in cases relating to taxes, CESS, etc., the rule of alternate remedy has to be applied with utmost rigour. This is articulated by Hon'ble Supreme Court in Satyawati Tandon Case [United Bank of India Vs. Satyawati Tondon and others reported in (2010) 8 SCC 110]. To be noted, Satyawati Tandon Case has recently been reiterated by Hon'ble Supreme Court in K.C.Mathew case [Authorized Officer, State Bank of Travancore Vs. Mathew K.C. reported in (2018) 3 SCC 85] Relevant paragraph in K.C.Mathew case is paragraph 10 and the same reads as follows:

> '10. In Satyawati Tondon the High Court had restrained further proceedings under Section 13(4) of the Act. Upon a detailed consideration of the statutory scheme under the SARFAESI Act, the availability of remedy to the aggrieved under Section 17 before the Tribunal and the appellate remedy under Section 18 before the Appellate Tribunal, the object and purpose of the legislation, it was observed that a writ petition ought not to be entertained in view of the alternate statutory remedy available holding: (SCC pp.123 & 128, Paras 43 & 55)
>
> > "43. Unfortunately, the High Court overlooked the settled law that the High Court will ordinarily not entertain a petition under

Article 226 of the Constitution if an effective remedy is available to the aggrieved person and that this Rule applies with greater rigour in matters involving recovery of taxes, cess, fees, other types of public money and the dues of banks and other financial institutions. In our view, while dealing with the petitions involving challenge to the action taken for recovery of the public dues, etc., the High Court must keep in mind that the legislations enacted by Parliament and State Legislatures for recovery of such dues are a code unto themselves inasmuch as they not only contain comprehensive procedure for recovery of the dues but also envisage constitution of quasi-judicial bodies for redressal of the grievance of any aggrieved person. Therefore, in all such cases, the High Court must insist that before availing remedy under Article 226 of the Constitution, a person must exhaust the remedies available under the relevant statute.

55.It is a matter of serious concern that despite repeated pronouncement of this Court, the High Courts continue to ignore the availability of statutory remedies under the DRT Act and the SARFAESI Act and exercise jurisdiction under Article 226 for passing orders which have serious adverse impact on the right of banks and other financial institutions to recover their dues. We hope and trust that in future the High Courts will exercise their discretion in such matters with greater caution, care and circumspection.'

(Underlining made by Court to supply emphasis and highlight)

16. A careful perusal of K.C.Mathew case reveals that Hon'ble Supreme Court has also laid down exceptions to the rule of Alternate remedy and the exceptions broadly are

a) lack of jurisdiction

b) Violation of natural justice principles (NJP)

c) alternate remedy being ineffectual or in other words alternate remedy not being efficacious.

17. To be noted, aforesaid adumbration of exceptions to aforesaid alternate remedy rule is not exhaustive, but only broad heads which are imperative for disposal of instant writ petitions.

18. In the instant case, from the submissions made before this Court, this Court is convinced that instant cases do not fall under any of the aforesaid exceptions qua alternate remedy rule.

19. In the light of all that have been set out supra, instant writ petitions are dismissed. However, it is open to the writ petitioner to avail alternate remedy by filing appeals under Section 51 of TNVAT Act. For this purpose all questions are left open, if writ petitioner chooses to avail alternate remedy. While availing alternate remedy, if there is a delay and if writ petitioner seeks condonation of delay or seeks the benefit of Section 14 of Limitation Act, the plea of the writ petitioner shall be considered by the Appellate Authority on its own merits and in accordance with law.

20. These writ petitions are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-V)

//True copy//

Sub Assistant Registrar

vsm

The Assistant Commissioner (CT)
P.N.Palayam Assessment Circle
Coimbatore.

Copy To
The Section Officer,
ER Section, High Court, Madras

+1cc to Mr.R.Senniappan, Advocate SR.No.51633

+1cc to Special Government Pleader SR.No.52483

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RSV(CO)
GMY(22/07/2019)